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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,374	01/30/2004	Robert S. Konefal	17794	6527

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OWENS-ILLINOIS, INC.  
ONE SEAGATE, 25-LDP  
TOLEDO, OH 43666

EXAMINER
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SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/768,374

Applicant(s)

KONEFAL ET AL.

Examiner

James N. Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/30/04</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Kay US 4,452,364.

Kay '364 teaches a cylindrical skirt (33), a plurality of circumferentially-spaced lugs (31), and a circumferentially continuous annular wall (36).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landen US 3,659,735 in view of Landen US 3,567,057 and in view of Herr US 4,579,238.

Landen '735 teaches a container system comprising a closure (38) and container neck with resilient skirt (36) but fails to teach the skirt being formed of a plurality of spring elements.

Landen '057 teaches it is known to segment container neck spring elements (12a-d) in order to provide an upward biasing force.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the resilient container neck skirt of Landen '735, forming it in segments, as taught to be known by Landen '057, and furthermore because it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

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Furthermore, Landen '735 fails to teach the spring elements inbetween the circumferentially spaced projections.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the spring elements inbetween the circumferential projections, or at any other suitable location, because it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Finally, Landen '735 fails to teach an annular wall coaxial with the skirt.

Herr '238 teaches it is known to provide spring biased bayonet closures with an annular wall (22) coaxial with the skirt in order to seal the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an annular sealing wall on the closure of Landen '735, as taught by Herr '238, motivated by the benefit of providing means to sealing the container.

Regarding claim 16, the method is obvious in view of the combined prior art.

5. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landen US 3,659,735 in view of Landen US 3,567,057 as applied above to claim 1, and further in view of Morris RE. 29,779.

Landen '735 as modified above fails to teach a second annular wall with a radially outwardly extending bead.

Morris '779 teaches it is known to provide container closure caps with a second annular wall (20) with a circumferential annular bead (22) in order to sealingly engage a container neck opening in a non-child-resistant mode of operation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container closure cap of Landen '735, providing the second annular wall taught by Morris '779, motivated by the benefit of providing means to sealingly secure the container in a non-child-resistant mode of operation.

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6. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landen US 3,659,735 in view of Landen US 3,567,057 and in view of Miceli et al. US 6,161,711.

Landen '735 as modified above fails to teach a second annular wall with a radially outwardly extending bead.

Miceli '711 teaches it is known to provide container closure caps with a second annular wall (11) with a circumferential annular bead (12) in order to sealingly engage a container internal bead (unlabeled; best seen in figure 10) in order to seal the container opening in a non-child-resistant mode of operation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container closure cap of Landen '735, providing the second annular wall taught by Miceli '711, motivated by the benefit of providing means to sealingly secure the container in a non-child-resistant mode of operation.

7. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris US RE. 29,779 in view of Herr US 4,579,238.

Morris '779 teaches a container closure cap with a second annular wall (20) with a circumferential annular bead (22) in order to sealingly engage a container neck opening in a non-child-resistant mode of operation, but fails to teach an annular wall coaxial with the skirt.

Herr '238 teaches it is known to provide spring biased bayonet closures with an annular wall (22) coaxial with the skirt in order to seal the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an annular sealing wall on the closure of Morris '779, as taught by Herr '238, motivated by the benefit of providing means to sealing the container.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892, citing relevant references.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER